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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,672	03/29/2004	Sebastian Huther	H01.2-11499US01	1410
490	7590	10/21/2005	EXAMINER	
VIDAS, ARRETT & STEINKRAUS, P.A. 6109 BLUE CIRCLE DRIVE SUITE 2000 MINNETONKA, MN 55343-9185			BURCH, MELODY M	
			ART UNIT	PAPER NUMBER
			3683	

DATE MAILED: 10/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/811,672

Applicant(s)

HUTHER ET AL.

Examiner

Melody M. Burch

Art Unit

3683

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 04 October 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): the 103 rejections.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: 1-7.

Claim(s) rejected: _____

Claim(s) withdrawn from consideration: _____

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☒ Other: _____

Continuation of 11. does NOT place the application in condition for allowance because: the disclosure changes submitted 4/11/05 include new matter.

Examiner maintains that the originally filed specification fails to provide support for the specific placement of the lifting height and travel direction sensors. Nowhere in the original disclosure was it mentioned that sensors 56, 58, 60, 62, and 64 were specifically associated with regulators (plural) 40 as the amended specification describes. With regards to the drawing changes, Applicant argues that Examiner required that the drawings be amended in the first office action. Examiner agrees that the office action requires that claimed subject matter be shown or cancelled from the claims. It is emphasized that drawing changes must not introduce new matter. The originally filed disclosure does not provide support for the extensive changes to the arrangement of the brake components set forth in the amended figure 1 filed 4/11/05.

The originally filed specification states that the braking signal generator 22 compares the desired braking force to the actual braking force. Applicant amended the specification to read that the braking signal from generator 22 defining the desired braking force is compared with the actual braking force. Examiner notes that since the force at junction 30 was previously described as a desired braking force, the force outputted from element 34 was previously described as an actual braking force, and the element 36 was described as a comparator, Examiner agrees that the originally filed drawings adequately support the rewording in the paragraph starting at pg. 5 line 20. Accordingly, Examiner has withdrawn the objection regarding the new matter in the specification in the paragraph starting at pg. 5 line 20.

Examiner has also found Applicant's arguments regarding the 103 rejections persuasive. Wagner fails to show a three-phase driving motor which drives the driving wheel and which is controlled by a desired torque value and a first braking device associated with the driving wheel which operates from a signal derived from a comparison of a first braking signal (which is converted into a desired torque value) compared with an actual braking signal (derived from an actual torque value of the driving motor). Accordingly, the 103 rejections have been withdrawn. However, claims 1-7 are objected to because "breaking device" in the last line of claim 1 should be changed to --braking device.-- as required in the office action.

Finally, Applicant argues that he does not believe that the office action was properly made final stating that an "office action, which includes a brand new 103 rejection, based on the art of record during the first office action, should be non-final." Examiner notes that section 706.07(a) of the MPEP states that an office action should be made final "except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment nor based on information submitted in an information disclosure statement..." In this case, Applicant's amendments necessitated a new ground of rejection, therefore, the office action is properly made final.

mmms
10/12/05

Melanie Torres
Melanie Torres
Primary Examiner
10-19-05